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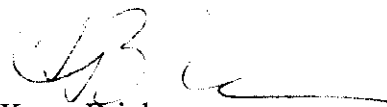
Re: Reply Comments of CenturyTel, Inc. In the Matters of Federal-State Joint  
Board on Universal Service and Access Charge Reform  
(CC Docket Nos. 96-45/96-262)

Dear Ms. Salas:

Please find enclosed an original and 4 copies of the Reply Comments of  
CenturyTel, Inc. in the above-referenced dockets.

If you have any questions regarding this matter, please call me at (202) 637-2262.

Very truly yours,

  
Karen Brinkmann

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matters of	)	
	)	
Federal-State Joint Board	)	CC Docket No. 96-45
on Universal Service	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262

**REPLY COMMENTS OF CENTURYTEL, INC.**

CENTURYTEL, INC. (CenturyTel), through its attorneys, hereby submits the following reply comments in response to the Commission's recent Further Notice of Proposed Rulemaking (Further Notice) in these proceedings.<sup>1</sup>

**I. INTRODUCTION**

The record in this proceeding reflects widespread support for the carrier-by-carrier hold harmless provision advocated by CenturyTel in its comments in this proceeding.<sup>2</sup> CenturyTel supports these commenters views on the hold harmless mechanism. CenturyTel continues to believe that, as the Commission begins its examination of universal service mechanisms for rural

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<sup>1</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *Access Charge Reform*, CC Docket No. 96-262, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, FCC 99-119 (rel. May 28, 1999) ("Further Notice").

<sup>2</sup> *E.g.*, Rural Telephone Coalition comments at 13-15; USTA comments at 5; Western Alliance comments at 15-16; TDS Telecom comments at 10-12; Sprint comments at 5-7; BellSouth comments at 9-11; SBC comments at 9-10; GVNW comments at 9-10; ITCs comments at 7-8.

carriers, only a federal commitment to a carrier-by-carrier hold harmless mechanism will promote, to the fullest extent possible, a stable regulatory environment for rural carriers.

In these reply comments, CenturyTel urges the Commission to hold rural carriers harmless on January 1, 2000, as it makes the transition for non-rural carriers to the new, forward-looking support mechanism. Unless the Commission takes proactive corrective action before that date, its current rules may cause significant reductions in support for rural carriers.<sup>3</sup> Specifically, CenturyTel urges the Commission either (1) to eliminate the cap contained in section 36.601(c) of the Commission's rules that prevents the current universal service fund from supporting all loop costs reassigned to the interstate jurisdiction by the section 36.631 expense adjustment; or (2) to continue to use non-rural carrier data in determining the size of the current fund and support levels for rural carriers.

## **II. DISCUSSION**

### **A. Operation of the Current High Cost Support Mechanism**

As the Commission implements its new forward-looking high cost support mechanism for non-rural carriers, it must also take corrective action to ensure that this transition does not cause sudden, substantial, and severe reductions in the amount of universal service support that otherwise would be available to small and rural LECs. This fund provides explicit support, among other components, for loop costs that significantly exceed the national average, according to a "step" function that reassigns an increasing portion of the carrier's loop costs to

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<sup>3</sup> See USTA comments at 5, n.14; RTC comments at 16-21; Western Alliance comments at 5-7.

the interstate jurisdiction.<sup>4</sup> This step function operates to assign, through an “expense adjustment” mechanism, a relatively larger portion of rural carrier loop costs to the interstate jurisdiction as compared to those of carriers serving denser markets.<sup>5</sup> Because of this difference in the operation of the two step functions, and because small carriers have relatively greater loop costs than larger carriers, even on an unseparated basis, small and rural carriers typically have relatively higher interstate-allocated loop costs than other carriers.

Loop costs assigned to the interstate jurisdiction under section 36.631 are recovered, not from subscriber line charges or other common line access charges, but from explicit support received from the universal service mechanism. As the record before the Commission explains, the annual growth in the size of this existing universal service mechanism, from which eligible telecommunications carriers currently receive explicit high cost support, is limited to the nationwide rate of growth in working loops during the previous year.<sup>6</sup> This capped growth rate, contained in section 36.601(c) of the Commission’s rules, originally was

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<sup>4</sup> This step function is contained in section 36.631 of the Commission’s rules. 47 C.F.R. § 36.631.

<sup>5</sup> Section 36.631(b) allocates additional loop costs to the interstate jurisdiction over and above the 25 percent of loop costs the separations rules otherwise allocate to the interstate jurisdiction. For study areas with 200,000 or fewer loops, the Commission’s rules allocate an additional 65 percent of loop costs in excess of 115 percent of the national average, and an additional 75 percent of the loop costs (*i.e.*, the entire cost of the loop) above 150 percent of the national average to the interstate jurisdiction. For study areas with greater than 200,000 loops, the Commission’s rules allocate an additional 10 percent of loop costs in excess of 115 percent of the national average, an additional 30 percent of the loop costs above 160 percent of the national average, an additional 60 percent of loop costs in excess of 200 percent of the national average, and an additional 75 percent of the loop costs (*i.e.*, the entire cost of the loop) above 250 percent of the national average to the interstate jurisdiction. Further Notice at para. 98.

<sup>6</sup> 47 C.F.R. § 36.601(c).

adopted in 1994 to limit and stabilize the growth of the high cost fund.<sup>7</sup> Since that time, the growth in the annual aggregate expense adjustment amount for all carriers has frequently exceeded the percentage of the fund represented by the percentage annual growth rate in lines.<sup>8</sup> Accordingly, routinely since the cap was adopted, federal high cost support has been held below the level the Commission's own mechanism indicates is necessary.

#### **B. Impact on Rural Carriers**

When the cap operates to constrain the size of the universal service mechanism below the level the expense adjustment otherwise would indicate, the Commission's rules raise the support threshold to the level necessary to produce a level of demand equal to the constrained fund size.<sup>9</sup> As applied to the approximately 36 million high cost loops now supported by the current mechanism, only a small increase in the support threshold is required to reduce the demand for support to the capped level, and the reduction in support is spread across a large number of mostly non-rural loops. Small and rural carriers' interstate-allocated loop costs generally are greater than those of larger carriers, however, so that, despite representing only 8 million of the 36 million supported lines, these small and rural carriers collectively receive a substantial majority of this mechanism's support.

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<sup>7</sup> Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Report and Order, 9 FCC Rcd 303 (1994).

<sup>8</sup> *E.g.*, Federal Universal Service Programs, Fund Size Projections and Contribution Base for the Second Quarter 1999, Universal Service Administrative Company (filed January 29, 1999).

<sup>9</sup> 47 C.F.R. §36.622(c).

Once the non-rural carriers move to the new, forward-looking support mechanism, the mathematics associated with the cap will change. Because the Part 36 expense adjustment mechanism will provide support only to a small fraction of the number of loops it formerly supported, and because those loops, collectively, are significantly higher in cost, the operation of the cap will cause the support threshold to rise to a considerably greater level than ever has been required in the past to meet the cap. Unfortunately, when this happens, support flowing to small and rural carriers will sharply contract, as a result of the constraints of the cap.

### **C. The Need for a Rural Carrier Hold Harmless Policy**

Given the well-recognized concerns that caused the Commission to adopt a hold harmless principle for non-rural carriers,<sup>10</sup> the Commission should similarly take critically-needed steps to ensure that rural carriers are also held harmless against reductions in their support on January 1, 2000.

Indeed, the failure to take such steps would stand in stark contradiction to the Commission's repeated statements that it will take no action to alter support for rural carriers until at least the year 2001.<sup>11</sup> When the Commission revised section 36.601(c) to remove non-rural carriers from the existing mechanism once the new, forward-looking mechanism is implemented, it reasonably recognized that, if non-rural carriers were to receive support calculated using a forward-looking mechanism, there would be no need to calculate these

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<sup>10</sup> Further Notice at paras. 68-69 (contained in the Seventh Report and Order portion).

<sup>11</sup> *E.g.*, Further Notice at para. 21; *Universal Service Order*, 12 FCC Rcd at 8910, 8917-18.

former support amounts.<sup>12</sup> The Commission did not consider at the time, however, the potential conflict with its statements in the same order that rural carriers should see no change at least until 2001.

Hold harmless is at least as important to rural carriers, which are substantially dependent on universal service support to bring high-quality, affordable services to their subscribers, as it is to non-rural carriers. Accordingly, the Commission should commit itself to a hold harmless policy, not just in the context of non-rural carriers, but also for rural carriers that may see significant changes to their support levels unless the Commission averts this crisis.

Revision of the section 36.601(c) cap is also required for the existing mechanism to provide “sufficient” support, as required by section 254. As the Commission correctly observed in the Further Notice, its proposals to fund only a portion of the support otherwise indicated by the new forward-looking methodology for non-rural carriers, whether by funding only a uniform percentage, by capping support at a maximum percentage of the overall fund, or through another method, raises serious questions under the section 254(b)(5) requirement that support be “sufficient.”<sup>13</sup> The principle of sufficiency is no less important to rural carriers. Against this backdrop, when the Commission in 1994 adopted the indexed cap at issue here, the Telecommunications Act of 1996 had not yet been passed and the Commission,

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<sup>12</sup> Universal Service Order, 12 FCC Rcd at 8934, 9314.

<sup>13</sup> Further Notice at paras. 108-09.

as a result, has never examined the question of whether the indexed cap comports with the statutory sufficiency standard.

In addition, the Fifth Circuit's recent decision in *Texas Office of Public Utility Counsel v. FCC*<sup>14</sup> requires the Commission to eliminate this cap. That portion of the rural carriers' loop costs that is reassigned to the interstate jurisdiction under section 36.631, but not explicitly supported because the cap on the high cost fund constrains support levels, remain in these carriers' interstate common line revenue requirements. Recovery in this manner represents a stream of implicit universal service support, in violation of the Fifth Circuit's holding that "the plain language of section 254(e) does not permit the FCC to maintain any implicit subsidies for universal service support."<sup>15</sup>

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<sup>14</sup> No. 97-60421, 1999 U.S. App. LEXIS 17941 (5<sup>th</sup> Cir. July 30, 1999).

<sup>15</sup> *Id.*, at \*66.



## CONCLUSION

For the foregoing reasons, CenturyTel urges the Commission to take steps to hold rural carriers harmless, affording them the same protections as non-rural carriers, during the transition to a forward-looking universal service support mechanism for non-rural carriers, on January 1, 2000. The Commission should do so either by (1) eliminating the cap contained in section 36.601(c) of the Commission's rules that prevents the current universal service fund from supporting all loop costs reassigned to the interstate jurisdiction by the section 36.631 expense adjustment; or (2) continuing to use non-rural carrier data in determining the size of the current fund and support levels for rural carriers.

Respectfully submitted,  
CENTURYTEL, INC.



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August 6, 1999